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ATTORNEYS FOR SOUTHWEST BANK

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

IN RE:	§	
	§	CASE NO. 11-43603-BTR
STANLEY THAW,	§	
	§	CHAPTER 7
DEBTOR.	§	

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SOUTHWEST BANK,	§	
	§	
Plaintiff,	§	
	§	
v.	§	ADVERSARY NO. _____
	§	
STANLEY THAW,	§	
	§	
Defendant.	§	

**COMPLAINT TO DISCHARGEABILITY OF DEBT**

COMES NOW Southwest Bank, Plaintiff herein and a creditor and party-in-interest in the aforementioned bankruptcy case (“Southwest”), and files this its Complaint to Dischargeability of Debt, and in support thereof would respectfully show the Court as follows:

I.

SERVICE

1. Stanley Thaw, Defendant herein (“Defendant”), can be served at 5197 Brandywine Lane, Frisco, Texas 75034 and through his counsel, Daniel C. Durand, III, Durand & Associates, P.C., 522 Edmonds, Suite 101, Lewisville, Texas 75067.

II.

VENUE & JURISDICTION

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a), (b)(1), (b)(2)(I), 1334(b) and 11 U.S.C. § 523(c), which characterize this matter as a “core proceeding” in a case arising under Title 11. Because the underlying bankruptcy case is pending in the United Bankruptcy Court for the Eastern District of Texas, Sherman Division, venue is proper in this district and division.

3. Defendant filed for relief under Chapter 7 of the United States Bankruptcy Code on December 2, 2011. The deadline to determine dischargeability of certain debts is March 6, 2012. This Adversary Proceeding is therefore filed prior to the bar date set by the Court to object to the dischargeability of certain debts.

III.

BACKGROUND FACTS

4. Paragraphs 1 through 3 are incorporated herein as if fully set forth at length.

5. Southwest is the holder of a claim against Defendant arising out of an Adjustable Rate Note dated November 12, 2010, in the original principal amount of \$1,000,000.00, executed by Defendant and payable to Plaintiff (the "Note"). A true and correct copy of the Note is attached hereto as Exhibit "A" and is incorporated herein by reference as if fully set forth at length. The Note is secured by a lien in favor of Plaintiff on certain real property located in Dallas County, Texas that is owned by Defendant and more particularly described as follows:

Lot 9, Block 2/7449, Preston Crest, an Addition to the City of Dallas, Dallas County, Texas, according to the Plat thereof recorded in Volume 17, Page 59, of the Map Records of Dallas County, Texas; which property is known locally as 6122 Linden Lane, Dallas, Texas 75230 (the "Property").

6. The Note is secured by a lien in favor of Plaintiff on the Property pursuant to that certain Purchase Money Deed of Trust executed by Defendant in favor of Plaintiff on November 12, 2010, and recorded as Document No. 201000292663, Real Property Records, Dallas County, Texas (the "Deed of Trust"). A true and correct copy of the Deed of Trust is attached hereto as Exhibit "B" and is incorporated herein by reference.

7. The principal balance due on the Note as of the filing of this Complaint is \$974,597.62, together with all legally recoverable interest, fees, costs and expenses.

#### IV.

#### CLAIM FOR NON-DISCHARGEABILITY

8. Paragraphs 1 through 7 are incorporated herein as if fully set forth at length.

9. In connection with the entry of the loan agreement evidenced by the Note and Deed of Trust, Defendant executed one or more documents wherein Defendant made several material representations related to, *inter alia*, his financial status as of the date of the entry of the loan agreement and his intention to occupy the Property as his personal residence upon the

closing of the loan agreement. These representations were relied upon by Southwest in extending the credit to Defendant as evidenced by the Note. Southwest avers that when Defendant made these representations, he knew they were false or, alternatively, they were made with such reckless disregard for the truth as to constitute willful misrepresentations. Accordingly, the indebtedness described above should be excepted from discharge under 11 U.S.C. § 523(a)(2)(A) and (B).

10. As the proximate result of extending credit based on Defendant's misrepresentations, Southwest has sustained loss and damage in the principal amount of \$974,597.62, plus all legally recoverable interest, fees, costs and expenses. This sum represents the outstanding balance due on the Note that is otherwise dischargeable but for the fact it was obtained through false pretenses, false representations, or actual fraud by Defendant and/or through use of a statement in writing that is materially false, respecting Defendant's and his insider's financial condition, on which Southwest reasonably relied, and that the Defendant caused to be made with intent to deceive. This indebtedness is therefore non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and (B).

11. The terms and conditions of the Note and Deed of Trust also call for the payment of reasonable attorney's fees and all costs expended by Southwest in the collection of the Note, which sums are also requested in the foregoing cause of action.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Southwest Bank prays that the Court enter an Order and/or Judgment that the sums represented above are nondischargeable against Defendant Stanley Thaw, together with interest, attorneys' fees, costs, and any other relief, at law or in equity, to which Plaintiff is justly entitled.

Date: February 15, 2012

Respectfully submitted,

POPE, HARDWICKE, CHRISTIE, SCHELL,  
KELLY & RAY, L.L.P.

By: /s/ Matthew T. Taplett  
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ATTORNEYS FOR PLAINTIFF  
SOUTHWEST BANK

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